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In the Supreme Court of the United States

OCTOBER TERM, 1982

TELEDYNE MOVIBLE OFFSHORE, INC., ET AL., APPELLANTS

v.

DAN THOMPSON

ON APPEAL FROM THE SUPREME COURT OF LOUISIANA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTION PRESENTED

Whether an employee, hired in the State of Louisiana and injured on a fixed platform on the Outer Continental Shelf beyond the territorial waters of the State of Louisiana, is entitled to recover Louisiana workers' compensation benefits in state court, notwithstanding his entitlement to and receipt of benefits under the federal Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. (& Supp. V) 901 *et seq.*, as incorporated by the Outer Continental Shelf Lands Act, 43 U.S.C. (Supp. V) 1333(b).

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This brief is filed in response to the Court's invitation to the Solicitor General to express the views of the United States.

STATEMENT

Appellee Dan Thompson was employed by the New Iberia, Louisiana, office of appellant Teledyne Movible Offshore, Inc. ("Teledyne") (J.S. App. A-2). Thompson worked as a derrick hand on an immovable platform rig in the federal waters of the Outer Continental Shelf approximately four miles off the Louisiana coast (*ibid.*).[1] On March 19, 1980, while working on the platform, Thompson's right hand was injured by a falling pipe (*id.* at A-2 to A-3).

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[1]The Outer Continental Shelf is defined by the Outer Continental Shelf Lands Act, 43 U.S.C. 1331(a), as "all submerged lands lying seaward and outside of the area of lands beneath [state territorial] waters * * * and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control."

Thompson instituted suit against appellants in Louisiana state court, seeking benefits under the Louisiana Workmen's Compensation Act, La. Rev. Stat. Ann. § 23:1021 *et seq.* (West 1964 & Cum. Supp. 1983) (J.S. App. A-2). Appellants filed an exception for lack of subject matter jurisdiction, claiming that Thompson's injury was exclusively within the coverage of the Longshoremen's and Harbor Workers' Compensation Act ("LHWCA"), 33 U.S.C. (& Supp. V) 901 *et seq.*, as incorporated by the Outer Continental Shelf Lands Act ("OCSLA"), 43 U.S.C. (Supp. V) 1333(b) (J.S. App. A-2; J.S. 3-4). The trial court overruled the exception (J.S. App. A-2). On appeal, the Louisiana Court of Appeal for the Third Circuit sustained the exception and dismissed the suit (*ibid.*). The Louisiana Supreme Court granted appellee's application for review and reversed the state court of appeal, holding that "Louisiana state courts do have subject matter jurisdiction over a claim for Louisiana compensation benefits because of an employment related accidental injury sustained by a Louisiana worker hired in Louisiana for work on a fixed platform outside the territorial waters of Louisiana" (*id.* at A-3).

In reaching this decision, the Louisiana Supreme Court first explained that state courts historically had "entertained worker's compensation suits by Louisiana residents injured outside Louisiana while engaged in employment having a substantial connection with Louisiana" (J.S. App. A-3).[2] The court next explained that this Court, in *Gulf Offshore Co.* v. *Mobil Oil Corp.*, 453 U.S. 473 (1981), had

[2]This common law rule was codified in 1975 with the enactment of La. Rev. Stat. Ann. § 23:1035.1 (West Cum. Supp. 1983), which provides workers' compensation benefits for an employee injured outside the state who would otherwise be entitled to benefits had the injury occurred within the state, so long as his employment is principally located in the state or his employment contract was entered into within the state (J.S. App. A-5). The pertinent parts of this statute are reproduced in the decision of the Louisiana Supreme Court (*id.* at A-5 to A-6).

determined that while the OCSLA establishes the exclusive political jurisdiction of the United States over the Outer Continental Shelf (43 U.S.C. (Supp. V) 1333(a)(1)),[3] the Act does not "preclude a state court's concurrent *judicial* jurisdiction over matters traditionally within [its] province" (J.S. App. A-7). The court noted that this presumption of concurrent state and federal judicial jurisdiction over claims arising on the Outer Continental Shelf can be rebutted by " '[1] an explicit statutory directive, by [2] unmistakable implication from legislative history, or by [3] a clear incompatibility between state court jurisdiction and federal interests' " (*ibid.*, quoting *Gulf Offshore Co.* v. *Mobil Oil Corp., supra,* 453 U.S. at 478). After examining each element of this test with respect to the OCSLA and the LHWCA, the court determined that the presumption of concurrent state and federal workers' compensation coverage was not rebutted here.

The court applied the first prong of the *Gulf Offshore* test to the language of the OCSLA and found that although the statute extends coverage of the LHWCA to injuries occurring on the Outer Continental Shelf, "it does not state that the LHWCA is the only compensation act that can be applied to instances of disability or death to an employee

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[3] 43 U.S.C. (Supp. V) 1333(a)(1) provides:

> The Constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom, or any such installation or other device (other than a ship or vessel) for the purpose of transporting such resources, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State: *Provided, however,* That mineral leases on the outer Continental Shelf shall be maintained or issued only under the provisions of this subchapter.

thereon" (J.S. App. A-9).[4] The court next looked to the legislative history of the OSCLA and found that it "underscores the fact that the Congressional concern was to assure federal political control over the Shelf and its 'real property, minerals and revenues, not over causes of action' " (*id.* at A-8, quoting *Gulf Offshore Co.* v. *Mobil Oil Corp., supra,* 453 U.S. at 482).

The Louisiana Supreme Court, finally, found no "clear incompatibility" between application of the Louisiana worker's compensation law and the LHWCA to an injury sustained by a Louisiana worker on an immovable platform on the Outer Continental Shelf (J.S. App. A-9 to A-15). The court noted that in *Sun Ship, Inc.* v. *Pennsylvania,* 447 U.S. 715 (1980), this Court found concurrent state and federal coverage for land-based injuries within the jurisdictional reach of both state remedies and the LHWCA (J.S.

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[4] 43 U.S.C. (Supp. V) 1333(b) provides:

> With respect to disability or death of an employee resulting from any injury occurring as the result of operations conducted on the outer Continental Shelf for the purpose of exploring for, developing, removing, or transporting by pipeline the natural resources, or involving rights to the natural resources, of the subsoil and seabed of the outer Continental Shelf, compensation shall be payable under the provisions of the Longshoremen's and Harbor Workers' Compensation Act [33 U.S.C. 901 *et seq.*]. For the purposes of the extension of the provisions of the Longshoremen's and Harbor Workers' Compensation Act under this section
>
> (1) the term "employee" does not include a master or member of a crew of any vessel, or an officer or employee of the United States or any agency thereof or of any State or foreign government, or of any political subdivision thereof;
>
> (2) the term "employer" means an employer any of whose employees are employed in such operations; and
>
> (3) the term "United States" when used in a geographical sense includes the outer Continental Shelf and artificial islands and fixed structures thereon.

App. A-10; accord, *Poche* v. *Avondale Shipyards, Inc.*, 339 So.2d 1212 (La. 1976), appeal dismissed *sub nom. Territo* v. *Poche*, 434 U.S. 803 (1977)). The court concluded that possible conflicts resulting from differences in coverage between federal and state compensation systems did not necessitate exclusive application of the LHWCA to Thompson's injuries because the purpose of the LHWCA was to establish minimum compensation benefits; Congress was not concerned with the disparity between " 'adequate federal benefits and *superior* state benefits' " (J.S. App. A-15; quoting *Sun Ship, Inc.* v. *Pennsylvania, supra*, 447 U.S. at 723-724).[5] The court below also pointed out that, under *Sun Ship*, compensation under one system would be credited against subsequent recovery under the other, thus preventing double recovery (J.S. App. A-15).

ARGUMENT

The Supreme Court of Louisiana correctly determined that a worker hired in Louisiana and injured while working on a fixed platform on the Outer Continental Shelf is entitled to recover Louisiana workers' compensation benefits in state court, notwithstanding his entitlement to and receipt of benefits under the federal LHWCA. This Court has already held that the LHWCA and state workers' compensation schemes operate concurrently on land and on navigable waters (*Sun Ship, Inc.* v. *Pennsylvania, supra*; *Calbeck* v. *Travelers Insurance Co.*, 370 U.S. 114 (1962)); the court below properly found that neither the language nor the legislative history of the OCSLA mandates exclusive application of the LHWCA to injuries on the Outer

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[5]The court noted (J.S. App. A-14 n.6) that Thompson might be entitled to greater benefits under the Louisiana law than under the LHWCA.

Continental Shelf.[6] Accordingly, this case does not warrant plenary review.[7]

1. It is well established that the power of a state to provide a workers' compensation remedy for local employees is not dependent on the fortuitous circumstance of where an injury occurred, but, rather, is dependent upon some substantial connection between the state and the employer-employee relationship. See, *e.g.*, *Cardillo* v. *Liberty Mutual Insurance Co.*, 330 U.S. 469, 476 (1947); *Alaska Packers Ass'n* v. *Industrial Accident Comm'n*, 294 U.S. 532, 541 (1935); *Bradford Electric Light Co.* v. *Clapper*, 286 U.S. 145, 156 (1932).[8] Thus, as the Supreme Court of Louisiana correctly noted, state courts have the constitutional power to compensate a locally employed worker for an injury received outside its borders (J.S. App. A-4). In Louisiana, this rule is codified in La. Rev. Stat. Ann. § 23:1035.1 (West Cum. Supp. 1983), which provides that compensation is payable to an employee who, like Thompson, is injured outside of the state while "working under a contract of hire made in th[e] state."

It is also well established that a single employment injury may be compensable under more than one jurisdiction's compensation law, with credit available to the employer for

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[6]Appellants have not contended that Louisiana is constitutionally precluded from extending its state compensation scheme to the Outer Continental Shelf. See *Southern Pacific Co.* v. *Jensen*, 244 U.S. 205, 212 (1917).

[7]We express no opinion on whether this appeal is proper under 28 U.S.C. 1257(2).

[8]As this Court has recognized, "[t]he State where the employee lives has perhaps even a larger concern [than the place of the injury], for it is there that he is expected to return; and it is on his community that the impact of the injury is apt to be most keenly felt." *Crider* v. *Zurich Insurance Co.*, 380 U.S. 39, 41 (1965). See also *Thomas* v. *Washington Gas Light Co.*, 448 U.S. 261, 277-279 (1980) (plurality opinion).

amounts paid to the claimant under the law of the less generous jurisdiction. See, *e.g.*, *Thomas* v. *Washington Gas Light Co.*, 448 U.S. 261, 281 (1980) (plurality opinion). The claimant's pursuit and receipt of an award under one jurisdiction's law, moreover, does not constitute an election of remedies rendering other jurisdictions' laws inapplicable; a supplemental, noncumulative award remains available under the concurrent coverage of other jurisdictions' remedial schemes. See *Thomas* v. *Washington Gas Light Co., supra,* 448 U.S. at 284-285.[9]

Absent statutorily expressed exclusivity, these principles of concurrent coverage are not altered by the fact that one of the compensation schemes is federal, while the other is state-based. Indeed, this Court has repeatedly recognized concurrent jurisdiction for the LHWCA and state compensation laws. See *Sun Ship, Inc.* v. *Pennsylvania, supra*; *Calbeck* v. *Travelers Insurance Co., supra,* 370 U.S. at 131. Cf. *Davis* v. *Department of Labor,* 317 U.S. 249 (1942) (Court identifies "twilight zone" within which both state and federal coverage is available). In *Sun Ship,* for example, this Court held that the 1972 amendments to the LHWCA did not preempt state compensation remedies for land-based injuries: "the 1972 extension of federal jurisdiction supplements, rather than supplants, state compensation

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[9]In *Thomas* v. *Washington Gas Light Co., supra,* 448 U.S. at 280, the plurality opinion of the Court stated that successive supplemental awards assure adequate compensation to the injured worker. The interest of the first state in placing a ceiling on the liability of companies transacting business within its borders "is not strong enough to prevent other States with overlapping jurisdiction over particular injuries from giving effect to their more generous compensation policies." 448 U.S. at 284. The plurality emphasized that since compensation could have been sought under either state's law in the first instance, the employer and his insurer would "have had to measure their potential liability exposure by the more generous of the two workmen's compensation schemes in any event." *Id.* at 280.

law" (447 U.S. at 720).[10] The *Sun Ship* Court noted that, while one purpose of the 1972 amendments was to upgrade benefits for certain land-based injuries "to a federal minimum," the amendments did not preclude an award under state compensation law "if state remedial schemes are more generous than federal law" (*id.* at 723-724). The Court added that concurrent jurisdiction for the LHWCA and state compensation schemes does not result in double recovery, for an award under one compensation scheme is

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[10]Prior to 1972, Section 3(a) of the LHWCA, 33 U.S.C. (1970 ed.) 903(a), provided that compensation was available under the LHWCA if the injury "occur[s] upon the navigable waters * * * and if recovery for the disability or death through workmen's compensation proceedings *may not validly be provided by State law*" (emphasis added). Section 3(a), as thus drafted, was thought to draw a line between injuries that were covered exclusively by the LHWCA and injuries that were covered exclusively by state statutes. The boundary between state and federal remedies, however, was difficult to determine, and "the injured worker was compelled to make a jurisdictional guess before filing a claim." *Sun Ship, Inc.* v. *Pennsylvania, supra,* 447 U.S. at 718. To help alleviate this difficult situation, this Court in *Davis* v. *Department of Labor, supra,* 317 U.S. at 256, held that a compensation award could be provided under either state law or the LHWCA for an injury that fell within the "twilight zone" of uncertainty as to whether state or federal law applied. Thereafter, in *Calbeck* v. *Travelers Insurance Co., supra,* 370 U.S. at 124, this Court held that LHWCA coverage extended to all injuries on the "navigable waters" of the United States, whether or not the injury could be covered by state law. *Calbeck* also recognized the principle that state and federal jurisdiction are concurrent, thus permitting a claimant who had already received payments under a state statute to receive an award under the LHWCA subject to credit for the previous state payments. 370 U.S. at 131-132.

In 1972, Congress deleted the "may not validly be provided by state law" clause from Section 3(a) of the LHWCA. This Court, in *Sun Ship, Inc.* v. *Pennsylvania, supra,* 447 U.S. at 720-721, found that this deletion supported a finding of concurrent jurisdiction for the LHWCA and state remedial schemes because "[i]t would be a *tour de force* of statutory misinterpretation to treat the *removal* of phrasing that arguably establishes exclusive jurisdiction as manifesting the intent to command such exclusivity."

credited against any subsequent recovery under the second system. *Id.* at 725 n.8.[11]

2. The fact that the injury in this case occurred on the Outer Continental Shelf, beyond the territorial waters of Louisiana, does not mandate a result contrary to that reached in *Sun Ship*. The OCSLA, 43 U.S.C. (Supp. V) 1333(b), provides that "compensation shall be payable under the provisions of the [LHWCA]" for injuries occurring on the Outer Continental Shelf. It does not, however, in contrast to some other statutory extensions of LHWCA coverage,[12] state that the LHWCA is the exclusive workers' compensation remedy for injuries upon the Outer Continental Shelf. The OSCLA, moreover, expressly provides that the LHWCA is not to be given preclusive application to injuries occurring on the Outer Continental Shelf. After rendering the LHWCA applicable to injuries on the Shelf (43 U.S.C. (Supp. V) 1333(b)), the OCSLA provides that "[t]he specific application by this section of certain provisions of law to the subsoil and seabed of the outer Continental Shelf * * * *shall not give rise to any inference that the application * * * of any other provision of law is not intended*" (43 U.S.C. (Supp. V) 1333(f); emphasis added).

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[11]The court below correctly noted (J.S. App. A-1 n.1, citing *Calbeck* v. *Travelers Insurance Co., supra*) that there is no possibility of double recovery for the claimant in this case. Appellants erroneously assert (J.S. 5-6 n.1) that the Fifth Circuit in *Landry* v. *Carlson Mooring Service*, 643 F.2d 1080, reh'g denied *sub nom. Director, OWCP* v. *Carlson Mooring Service*, 647 F.2d 1121, cert. denied, 454 U.S. 1123 (1981), found that double recovery could result. In fact, *Landry* specifically states (643 F.2d at 1087) that amounts previously received under one system will be credited against subsequent recovery under the other, thus precluding double recovery.

[12]See Section 1(c) of the Defense Base Act, 42 U.S.C. 1651(c); Non-Appropriated Fund Instrumentalities Act, 5 U.S.C. 8173; see also Federal Employees' Compensation Act, 5 U.S.C. 8116(c).

Congress, therefore, clearly did not intend the LHWCA to be the exclusive remedy of workers injured on the Outer Continental Shelf.

The above conclusion is supported by the legislative history of the OCSLA. As originally drafted, 43 U.S.C. (Supp. V) 1333(b) would have applied the LHWCA to the Shelf only "if recovery for such disability or death through workmen's compensation proceedings is not provided by State law." S.1901, 83d Cong., 1st Sess. (1953), *reprinted in Outer Continental Shelf: Hearings on S. 1901 and S.1901 Amendments Before the Senate Comm. on Interior and Insular Affairs*, 83d Cong., 1st Sess. 2 (1953). A similar phrase in the original version of the LHWCA had been interpreted earlier as making the federal compensation scheme exclusive within its sphere of operation. See note 10, *supra*. This limiting language in the OCSLA was deleted, however, because "[i]t was deemed inadvisable to have the Federal Longshoremen's and Harbor Workers' Compensation Act apply only if there is no applicable State law." *Outer Continental Shelf Lands Act: Report Together with Minority Views from the Senate Comm. on Interior and Insular Affairs to Accompany S.1901*, 83d Cong., 1st Sess. 23 (1953). Congress was apparently aware of and sought to avoid the difficult line drawing problems that had emerged during the early administration of the LHWCA, when the federal Act and state compensation schemes were thought to be mutually exclusive (see note 10, *supra*). But, whatever Congress' motivation for deleting this limiting language from the OCSLA, the elimination of language that would have established the LHWCA and state compensation schemes as mutually exclusive remedies for injuries on the Outer Continental Shelf renders appellant's exclusivity arguments untenable.[13] See *Sun Ship, Inc.* v. *Pennsylvania, supra*, 447 U.S. at 720-721.

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[13]Proposed amendments pending before Congress include a provision that would make the LHWCA the exclusive workers' compensation remedy for injuries covered by the Act. See Section 4(a) of S.38,

Faced with the clear import of 43 U.S.C. (Supp. V) 1333(b) and (f), appellants erroneously attempt to derive an exclusivity argument from other statutory provisions of the OCSLA. First, they rely (J.S. 13-14) on 43 U.S.C. (Supp. V) 1333(a)(1) and (2)(A), which extends the "Constitution and laws and civil and political jurisdiction of the United States" to the Outer Continental Shelf and to "artificial islands and fixed structures" built thereon, "to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State." The Louisiana Supreme Court correctly pointed out (J.S. App. A-7), however, "that the federal *political* jurisdiction to which the Outer Continental Shelf Lands Act (43 U.S.C. § 1331 *et seq.*) is directed [does] not preclude a state court's concurrent *judicial* jurisdiction over matters traditionally within their province."[14] As this Court noted in *Gulf Offshore Co.* (453 U.S. at 484), in enacting the OCSLA, Congress was aware of the close ties between the individuals working on the Outer Continental Shelf and the adjacent states to which they commute and in which their families live. Accord, *Chevron Oil Co.* v. *Huson*, 404 U.S. 97, 103 (1971); *Rodrigue* v. *Aetna Casualty Co.*, 395 U.S. 352, 365 (1969). In view of the nonexclusivity provision of Section 1333(f) and the express recognition of a legitimate state interest in the workers on the Shelf, Congress could not have intended 43 U.S.C.

98th Cong., 1st Sess. (1983), which would amend Section 5(a) of the LHWCA, 33 U.S.C. 905(a). 129 Cong. Rec. S269 (daily ed. Jan. 26, 1983). The amendments were passed by the Senate on June 16, 1983. 129 Cong. Rec. S8656 (daily ed. June 16, 1983).

[14]Exclusive federal sovereignty over a territory or federal enclave does not necessarily preclude state courts from exercising subject matter jurisdiction over civil and criminal suits arising on such areas within their borders. *Gulf Offshore Co.* v. *Mobil Oil Corp.*, *supra*, 453 U.S. at 481-482; see also *Evans* v. *Cornman*, 398 U.S. 419 (1970); *United States* v. *Sharpnack*, 355 U.S. 286 (1958); *Ohio River Contract Co.* v. *Gordon*, 244 U.S. 68 (1917).

(Supp. V) 1333(a)(1) to preclude application of an adjacent state's workers' compensation law.[15]

43 U.S.C. (Supp. V) 1333(a)(2)(A), also relied upon by appellants (J.S. 14-16), similarly does not afford a basis for finding exclusivity here. That subsection adopts "applicable and not inconsistent" laws of the adjacent states as federal law in order to fill possible gaps in the coverage of the OCSLA.[16] See *Gulf Offshore Co.* v. *Mobil Oil Corp., supra* (Texas personal injury and indemnification law applicable as federal law to injury on the Shelf); *Rodrigue* v. *Aetna Casualty Co., supra* (Louisiana wrongful death remedy made applicable as federal law to Shelf); *Chevron Oil Co.* v. *Huson,* 404 U.S. 97 (1971) (Louisiana state statute of limitations applied as federal law to personal injury actions on the Shelf). Appellants argue that there is no gap in the instant case because the federal workers' compensation law is a "pervasive scheme" (J.S. 14-15).

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[15] "'Federal regulations * * * should not be deemed preemptive of state regulatory power in the absence of persuasive reasons – either that the nature of the regulated subject matter permits no other conclusion, or that Congress has unmistakably so ordained.' * * * States possess broad authority under their police powers to regulate the employment relationship to protect workers within the State." *De Canas* v. *Bica,* 424 U.S. 351, 356 (1976), quoting *Florida Lime & Avocado Growers, Inc.* v. *Paul,* 373 U.S. 132, 142 (1963).

[16] 43 U.S.C. (Supp. V) 1333(a)(2)(A) provides:

> To the extent that they are applicable and not inconsistent with this subchapter or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent State, now in effect or hereafter adopted, amended, or repealed are declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf, and the President shall determine and publish in the Federal Register such projected lines extending seaward and defining each such area. All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the outer Continental Shelf.

Appellants' argument, however, is simply beside the point: state law is not being applied in the instant case as "surrogate federal law" to fill a "gap" in federal coverage, but rather is being applied of its own force. That application, moreover, is permitted by the express language of the OSCLA, 43 U.S.C. (Supp. V) 1333(b) and (f). Because Congress was well aware that the LHWCA is a comprehensive statute, but nonetheless refrained from making its application to the Shelf exclusive, it is evident that Congress intended 43 U.S.C. (Supp. V) 1333(a)(2)(A) to address other legal remedies not provided by federal law, such as the various third-party tort actions recognized by state law.[17]

3. To be sure, some difficulties in coverage and administration will arise from concurrent application of federal and state workers' compensation remedies to injuries on the Outer Continental Shelf. It is clear from the OSCLA, 43 U.S.C. (Supp. V) 1333(b) and (f), however, that Congress did not view such difficulties as sufficiently prohibitive to make the LHWCA exclusive. It is also important to note that the alleged "conflicts" raised by the appellants (J.S. 6-10) already exist in the area of concurrent coverage for land-based injuries recognized by this Court in *Sun Ship*. In

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[17]We are aware that in *Nations* v. *Morris*, 483 F.2d 577, cert. denied, 414 U.S. 1071 (1973), the Fifth Circuit stated in *dicta* that the LHWCA is the exclusive remedy for injuries incurred on the Outer Continental Shelf. That pronouncement preceded *Sun Ship, Inc.* v. *Pennsylvania, supra, Gulf Offshore Co.* v. *Mobil Oil Corp., supra,* and *Thomas* v. *Washington Gas Light Co., supra;* and, we submit, could not be sustained in light of those decisions. In *Nations,* moreover, the Fifth Circuit only considered whether a state direct action statute could apply to the Outer Continental shelf; the court did not address whether a state could provide a workers' compensation remedy that runs concurrently with the LHWCA. 483 F.2d at 582-583. The Fifth Circuit has not directly addressed the issue involved in this case since *Nations.* Cf. *Stansbury* v. *Sikorski Aircraft,* 681 F.2d 948 (5th Cir. 1982), cert. denied, No. 82-824 (Dec. 13, 1982) (LHWCA is exclusive *federal* remedy for injury on the Outer Continental Shelf). In view of the intervening authority, it is unlikely that that court would reach a conclusion inconsistent with the decision below.

Sun Ship, the Court addressed the problems created by concurrent jurisdiction of state and federal workers' compensation remedies and concluded that such difficulties do not require exclusivity (447 U.S. at 725; footnote omitted):

> We are not persuaded that the bare fact that the federal and state compensation systems are different gives rise to a conflict that, from the employer's standpoint, necessitates exclusivity for each compensation system within a separate sphere. Mandating exclusive jurisdiction will not relieve employers of their distinct obligations under state and federal compensation law.

CONCLUSION

The appeal should be dismissed for want of a substantial federal question.

Respectfully submitted.

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